



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of J.T., City of Newark

CSC Docket No. 2022-192

Administrative Appeal

ISSUED: NOVEMBER 1, 2021 (ABR)

J.T., a former Police Officer with the City of Newark (Newark), requests to be reinstated with back pay, benefits and seniority.

By way of background, the petitioner was appointed to the title of Police Officer, effective July 29, 1996. A promotional examination for the title of Police Sergeant, (PM2559F), Newark, was announced with a closing date of June 29, 2004. The petitioner applied for and was admitted to the subject examination, achieved a passing score, and was subsequently ranked 409th on the resultant eligible list. On March 2, 2006, the appointing authority served the petitioner with a Final Notice of Disciplinary Action (FNDA), removing him, effective February 27, 2005, on nine charges, including malingering, insubordination, and other sufficient cause arising out of unauthorized absences, feigned illness, failures to attend ordered medical and psychological evaluations, and failures to be accessible to Newark Police Department superior officers on days during which he booked off sick, all occurring on various dates between February 2005 and December 2005. Upon his appeal, the matter was transmitted to the Office of Administrative Law for a hearing. Following a hearing and the Merit System Board's¹ *de novo* review of the record, the Merit System Board dismissed the petitioner's appeal for failure to prosecute and ordered him to pay sanctions.

In 2009, the petitioner filed an action against the City of Newark and the City of Newark's Police Department in the Superior Court, Law Division (Law Division) alleging wrongful termination and retaliation, and asserting a claim under the Law Against Discrimination. Before the conclusion of a trial, the parties

¹ The Merit System Board was the predecessor of the current Civil Service Commission.

entered into a settlement agreement which was memorialized in a court order entered on May 16, 2012. The terms of the settlement included, in pertinent part, that the petitioner's employment status would be amended from removed to retired on disability and that the appointing authority would dismiss all administrative charges against the petitioner. The petitioner subsequently filed a motion to enforce litigant's rights, which was entered by the Law Division on September 14, 2014.

Separately, in January 2010, the United States Department of Justice (DOJ) filed a lawsuit against the State and the Civil Service Commission challenging the written examination utilized to select candidates for promotion to the title of Police Sergeant. The DOJ alleged, in part, that the State's use of a Police Sergeant written examination and certification of candidates in descending rank order disparately impacted African-American and Hispanic candidates for promotion to the subject title, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended (Title VII). The State denied that it violated Title VII. However, in order to settle the dispute, the State and the DOJ entered into a Consent Decree. A Second Amended Consent Decree was approved by the United States District Court for the District of New Jersey on November 22, 2011, which provided that in consultation with the DOJ, the State would: develop a new examination and scoring process for selecting Police Sergeant candidates; the State would provide \$1 million in back pay to be distributed among African-American and Hispanic claimants from certain jurisdictions who were determined to be adversely affected by the State's utilization of the written examination; and that at least 68 priority promotions would be given to minority candidates in 13 specified jurisdictions, including Newark. African-American candidates who took the PM2530C, PM2559F and PM2602J promotional examinations for the title of Police Sergeant in Newark and Hispanic candidates who took the PM2559F examination were deemed eligible for relief under the Consent Decree, including 514 candidates who were deemed eligible for back pay and priority promotion. 221 of these candidates, including the petitioner, were listed as having presumptive appointment dates² of May 6, 2002; 254 candidates were listed as having a presumptive appointment date of June 28, 2007; and 39 candidates were shown with a presumptive appointment date of April 14, 2009. Pursuant to the Consent Decree, 14 priority promotion positions were allocated to African-American eligibles and one priority promotional position was allocated to a Hispanic candidate for the title of Police Sergeant in Newark. All priority promotions were to be made in accordance with the provisions of, and all Claimants seeking a priority promotion

² For purposes of the Consent Decree, "presumptive appointment date" was "based upon the median appointment date for candidates on the eligible list that would have included the Claimant or from which the Claimant would have been appointed." For a claimant appointed as a priority promotion under the Consent Decree, as of the date of the completion of their working test period, the State was required to credit the claimant with retroactive seniority corresponding to their presumptive appointment date as a Police Sergeant.

were subject to, *N.J.A.C.* 4A:4-4.1 through *N.J.A.C.* 4A:6-6.6, except in cases where a provision of the Consent Decree conflicted with or was otherwise inconsistent with any of the foregoing regulations, in which case the Consent Decree was to govern.

On appeal, the petitioner asserts that he was never notified that he had passed the PM2559F examination. He notes that in October 2012, he received a letter from the DOJ informing him that he had been “preliminarily deemed eligible for back pay and priority promotion.” He states that he returned a completed Interest in Back Pay and/or Priority Promotion Form to the DOJ in October 2013. Thereafter, he received a letter from the DOJ, dated February 8, 2013, which informed him that he was not eligible for priority promotion because he had been separated from service as a Police Officer in Newark. He avers that he would not have settled his discrimination lawsuit against the appointing authority if he had known that he had passed the PM2559F examination. He also contends that other individuals who had retired were able to receive promotions to higher-level titles after they had retired. He further argues that the appointing authority and this agency had a duty to notify him whether he passed or failed the PM2559F and that the appointing authority failed to fulfill its obligation to notify the DOJ that he was eligible for a priority promotion. Therefore, he requests to receive a promotion to the rank of Police Sergeant in Newark, back pay dating from June 18, 2004 to the present, an adjustment to his pension to reflect the promotions he would have received to date, to be allowed to take promotional examinations to the rank of Deputy Chief “and receive [his] promotion accordingly.”

CONCLUSION

N.J.A.C. 4A:4-7.12(a) provides that a permanent employee who has been placed on disability retirement may be reinstated following a determination that the retiree is no longer disabled. *N.J.A.C.* 4A:4-7.12(b) states that the employee’s reinstatement shall have priority over appointment from any eligible list, except a special reemployment list.

N.J.S.A. 43:16A-8(2) provides, in pertinent part, that:

Any beneficiary under the age of 55 years who has been retired on a disability retirement allowance under this act, on his request shall, or upon the request of the retirement system may, be given a medical examination and he shall submit to any examination by a physician or physicians designated by the medical board once a year for at least a period of five years following his retirement in order to determine whether or not the disability which existed at the time he was retired has vanished or has materially diminished. If the report of the medical board shall show that such beneficiary is able to perform either his former duty or any other available duty in the department which his

employer is willing to assign to him, the beneficiary shall report for duty.

Plainly, the Legislature intended that persons on disability retirement who are no longer disabled, *i.e.*, no longer entitled to disability retirement, and who are under the age of 55, be returned to either their prior positions or any available duty which their employers are willing to assign. In other words, the employee should be returned to his or her position as if the employee's service was never interrupted and the disability retirement never occurred. In order to effectuate this legislative mandate, the Civil Service Commission (Commission) promulgated *N.J.A.C.* 4A:4-7.12, which states:

- (a) A permanent employee who has been placed on disability retirement may be reinstated following a determination from the Division of Pensions that the retiree is no longer disabled.
- (b) The employee's reinstatement shall have priority over appointment from any eligible list, except a special reemployment list.

By adopting this regulation, the Commission codified its longstanding practice of implementing the provisions of *N.J.S.A.* 43:16A-8. Again, the "reinstatement" of the formerly disabled retiree is merely returning this individual to his or her prior position, or other available duties as determined by the employer, as if the disability retirement never occurred. *See N.J.S.A.* 43:16A-8.

Initially, is also noted that when the DOJ notified the petitioner in its February 8, 2013 letter that he was entitled to an award of back pay, but ineligible for priority promotion because he had separated from service as a Police Officer in the City of Newark, it also stated the following:

If you wish to object to the United States' preliminary determinations in any respect, you must take action, as explained in the enclosed **"INSTRUCTIONS FOR FILING AN OBJECTION TO INDIVIDUAL RELIEF."** **Making an objection is voluntary, but if you do not object at this time, you may be prohibited from objecting in the future.**

There is no indication in the record that the petitioner filed an objection with the DOJ in response to the DOJ's February 8, 2013 letter. Regardless, because any review by the Commission would fall outside the manner and time for review set forth in the Consent Decree, the Commission is unable to address any claim that the petitioner was entitled to a priority promotion thereunder. Nonetheless, it is noted that all Claimants seeking a priority promotion were subject to *N.J.A.C.* 4A:4-4.1 through *N.J.A.C.* 4A:6-6.6, and that pursuant to *N.J.A.C.* 4A:4-4.7(a)8, the name

of an eligible may be removed from an eligible list for discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope, and that per *N.J.A.C.* 4A:4-6.1(a)3, a person may be denied examination eligibility or appointment when he or she is physically or psychologically unfit to perform effectively the duties of the title. Thus, the DOJ's determination that the appellant was ineligible for a priority promotion under the Consent Decree was consistent with the Civil Service law and rules.

Moreover, pursuant to *N.J.A.C.* 4A:4-7.12, because the petitioner was approved for a disability retirement, it is necessary that the petitioner provide a determination from the Division of Pensions and Benefits that he is no longer disabled before he would be eligible for reinstatement. However, the petitioner has not presented a determination from the Division of Pensions and Benefits to show that he is no longer disabled. As such, he has not met the requirement for reinstatement from a disability retirement. Therefore, based upon the totality of the circumstances, the Commission does not have a basis to grant the requested relief to the petitioner.

ORDER

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 27TH DAY OF OCTOBER, 2021



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: J.T.
Tiffany M. Stewart
Division of Agency Services
Records Center
Senator Ronald L. Rice